

SENATE, No. 3647

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 19, 2021

Sponsored by:

Senator HOLLY T. SCHEPISI

District 39 (Bergen and Passaic)

SYNOPSIS

Prohibits affordable housing obligation exemptions for urban aid municipalities.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT prohibiting affordable housing obligation exemptions for
2 urban aid municipalities and amending P.L.1985, c.222.

3 BE IT ENACTED *by the Senate and General Assembly of the State*
4 *of New Jersey:*

5
6 1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to
7 read as follows:

8 2. The Legislature finds that:

9 a. The New Jersey Supreme Court, through its rulings in South
10 Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975)
11 and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158
12 (1983), has determined that every municipality in a growth area has
13 a constitutional obligation to provide through its land use
14 regulations a realistic opportunity for a fair share of its region's
15 present and prospective needs for housing for low and moderate
16 income families.

17 b. In the second Mount Laurel ruling, the Supreme Court stated
18 that the determination of the methods for satisfying this
19 constitutional obligation "is better left to the Legislature," that the
20 court has "always preferred legislative to judicial action in their
21 field," and that the judicial role in upholding the Mount Laurel
22 doctrine "could decrease as a result of legislative and executive
23 action."

24 c. The interest of all citizens, including low and moderate
25 income families in need of affordable housing, and the needs of the
26 workforce, would be best served by a comprehensive planning and
27 implementation response to this constitutional obligation.

28 d. There are a number of essential ingredients to a
29 comprehensive planning and implementation response, including
30 the establishment of reasonable fair share housing guidelines and
31 standards, the initial determination of fair share by officials at the
32 municipal level and the preparation of a municipal housing element,
33 State review of the local fair share study and housing element, and
34 continuous State funding for low and moderate income housing to
35 replace the federal housing subsidy programs which have been
36 almost completely eliminated.

37 e. The State can maximize the number of low and moderate
38 income units provided in New Jersey by allowing its municipalities
39 to adopt appropriate phasing schedules for meeting their fair share,
40 so long as the municipalities permit a timely achievement of an
41 appropriate fair share of the regional need for low and moderate
42 income housing as required by the Mt. Laurel I and II opinions and
43 other relevant court decisions.

44 f. The State can also maximize the number of low and
45 moderate income units by creating new affordable housing and by

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 rehabilitating existing, but substandard, housing in the State.
2 Because the Legislature has determined, pursuant to P.L.2008, c.46
3 (C.52:27D-329.1 et al.), that it is no longer appropriate or in
4 harmony with the Mount Laurel doctrine to permit the transfer of
5 the fair share obligations among municipalities within a housing
6 region, it is necessary and appropriate to create a new program to
7 create new affordable housing and to foster the rehabilitation of
8 existing, but substandard, housing.

9 g. Since the urban areas are vitally important to the State, the
10 construction, conversion, and rehabilitation of housing in our urban
11 centers [should be encouraged] shall be an essential part of
12 achieving the fair share of the regional need for low and moderate
13 income housing. However, the provision of housing in urban areas
14 must be balanced with the need to provide housing throughout the
15 State for the free mobility of citizens.

16 h. The Supreme Court of New Jersey in its Mount Laurel
17 decisions demands that municipal land use regulations affirmatively
18 afford a reasonable opportunity for a variety and choice of housing
19 including low and moderate cost housing, to meet the needs of
20 people desiring to live there. While provision for the actual
21 construction of that housing by municipalities is not required, they
22 are encouraged but not mandated to expend their own resources to
23 help provide low and moderate income housing.

24 i. Certain amendments to the enabling act of the Council on
25 Affordable Housing are necessary to provide guidance to the
26 council to ensure consistency with the legislative intent, while at the
27 same time clarifying the limitations of the council in its rulemaking.
28 Although the court has remarked in several decisions that the
29 Legislature has granted the council considerable deference in its
30 rulemaking, the Legislature retains its power and obligation to
31 clarify and amend the enabling act from which the council derives
32 its rulemaking power, from time to time, in order to better guide the
33 council.

34 j. The Legislature finds that the use of regional contribution
35 agreements, which permits municipalities to transfer a certain
36 portion of their fair share housing obligation outside of the
37 municipal borders, should no longer be utilized as a mechanism for
38 the creation of affordable housing by the council.

39 k. To minimize undue burdens on individual municipalities,
40 reduce urban sprawl, and direct development to areas that already
41 have extensive infrastructure in place and can more cost-effectively
42 accommodate new development, each urban municipality shall be
43 allocated a minimum fair share obligation representing an
44 appropriate portion of the of the regional need for low and moderate
45 income housing.

46 (cf: P.L.2008, c.46, s.4)

1 2 Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
2 read as follows:

3 4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):

4
5 a. "Council" means the Council on Affordable Housing
6 established in P.L.1985, c.222 (C.52:27D-301 et al.), which shall
7 have primary jurisdiction for the administration of housing
8 obligations in accordance with sound regional planning
9 considerations in this State, and any successor body, temporary or
10 otherwise, that obtains such primary jurisdiction.

11 b. "Housing region" means a geographic area of not less than
12 two nor more than four contiguous, whole counties which exhibit
13 significant social, economic and income similarities, and which
14 constitute to the greatest extent practicable the primary metropolitan
15 statistical areas as last defined by the United States Census Bureau
16 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.).

17 c. "Low income housing" means housing affordable according
18 to federal Department of Housing and Urban Development or other
19 recognized standards for home ownership and rental costs and
20 occupied or reserved for occupancy by households with a gross
21 household income equal to 50 percent or less of the median gross
22 household income for households of the same size within the
23 housing region in which the housing is located.

24 d. "Moderate income housing" means housing affordable
25 according to federal Department of Housing and Urban
26 Development or other recognized standards for home ownership
27 and rental costs and occupied or reserved for occupancy by
28 households with a gross household income equal to more than 50%
29 but less than 80 percent of the median gross household income for
30 households of the same size within the housing region in which the
31 housing is located.

32 e. "Resolution of participation" means a resolution adopted by
33 a municipality in which the municipality chooses to prepare a fair
34 share plan and housing element in accordance with P.L.1985, c.222
35 (C.52:27D-301 et al.).

36 f. "Inclusionary development" means a residential housing
37 development in which a substantial percentage of the housing units
38 are provided for a reasonable income range of low and moderate
39 income households.

40 g. "Conversion" means the conversion of existing commercial,
41 industrial, or residential structures for low and moderate income
42 housing purposes where a substantial percentage of the housing
43 units are provided for a reasonable income range of low and
44 moderate income households.

45 h. "Development" means any development for which
46 permission may be required pursuant to the "Municipal Land Use
47 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

1 i. "Agency" means the New Jersey Housing and Mortgage
2 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
3 seq.).

4 j. "Prospective need" means a projection of housing needs
5 based on development and growth which is reasonably likely to
6 occur in a region or a municipality, as the case may be, as a result
7 of actual determination of public and private entities. In
8 determining prospective need, consideration shall be given to
9 approvals of development applications, real property transfers, and
10 economic projections prepared by the State Planning Commission
11 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
12 196 et seq.).

13 k. "Person with a disability" means a person with a physical
14 disability, infirmity, malformation, or disfigurement which is
15 caused by bodily injury, birth defect, aging, or illness including
16 epilepsy and other seizure disorders, and which shall include, but
17 not be limited to, any degree of paralysis, amputation, lack of
18 physical coordination, blindness or visual impairment, deafness or
19 hearing impairment, the inability to speak or a speech impairment,
20 or physical reliance on a service animal, wheelchair, or other
21 remedial appliance or device.

22 l. "Adaptable" means constructed in compliance with the
23 technical design standards of the barrier free subcode adopted by
24 the Commissioner of Community Affairs pursuant to the "State
25 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
26 et seq.) and in accordance with the provisions of section 5 of
27 P.L.2005, c.350 (C.52:27D-123.15).

28 m. "Very low income housing" means housing affordable
29 according to federal Department of Housing and Urban
30 Development or other recognized standards for home ownership
31 and rental costs and occupied or reserved for occupancy by
32 households with a gross household income equal to 30 percent or
33 less of the median gross household income for households of the
34 same size within the housing region in which the housing is located.

35 n. "Urban municipality" means a municipality that qualifies for
36 State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.).
37 (cf: P.L.2017, c.131, s.199)

38

39 3. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
40 read as follows:

41 7. It shall be the duty of the council, seven months after the
42 confirmation of the last member initially appointed to the council,
43 or January 1, 1986, whichever is earlier, and from time to time
44 thereafter, to:

45 a. Determine housing regions of the State;

46 b. Estimate the present and prospective need for low and
47 moderate income housing at the State and regional levels;

48 c. Adopt criteria and guidelines for:

1 (1) Municipal determination of its present and prospective fair
2 share of the housing need in a given region which shall be
3 computed for a 10-year period.

4 Municipal fair share shall be determined after crediting on a one-
5 to-one basis each current unit of low and moderate income housing
6 of adequate standard, including any such housing constructed or
7 acquired as part of a housing program specifically intended to
8 provide housing for low and moderate income households;
9 provided, however, that the council shall not exempt an urban
10 municipality from any fair share obligation based exclusively on
11 current units of low and moderate income housing.

12 Notwithstanding any other law to the contrary, a municipality shall
13 be entitled to a credit for a unit if it demonstrates that (a) the
14 municipality issued a certificate of occupancy for the unit, which
15 was either newly constructed or rehabilitated between April 1, 1980
16 and December 15, 1986; (b) a construction code official certifies,
17 based upon a visual exterior survey, that the unit is in compliance
18 with pertinent construction code standards with respect to structural
19 elements, roofing, siding, doors and windows; (c) the household
20 occupying the unit certifies in writing, under penalty of perjury, that
21 it receives no greater income than that established pursuant to
22 section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for
23 moderate income housing; and (d) the unit for which credit is
24 sought is affordable to low and moderate income households under
25 the standards established by the council at the time of filing of the
26 petition for substantive certification. It shall be sufficient if the
27 certification required in subparagraph (c) is signed by one member
28 of the household. A certification submitted pursuant to this
29 paragraph shall be reviewable only by the council or its staff and
30 shall not be a public record;

31 Nothing in P.L.1995, c.81 shall affect the validity of substantive
32 certification granted by the council prior to November 21, 1994, or
33 of a judgment of compliance entered by any court of competent
34 jurisdiction prior to that date. Additionally, any municipality that
35 received substantive certification or a judgment of compliance prior
36 to November 21, 1994 and filed a motion prior to November 21,
37 1994 to amend substantive certification or a judgment of
38 compliance for the purpose of obtaining credits, shall be entitled to
39 a determination of its right to credits pursuant to the standards
40 established by the Legislature prior to P.L.1995, c.81. Any
41 municipality that filed a motion prior to November 21, 1994 for the
42 purpose of obtaining credits, which motion was supported by the
43 results of a completed survey performed pursuant to council rules,
44 shall be entitled to a determination of its right to credits pursuant to
45 the standards established by the Legislature prior to P.L.1995, c.81;

46 (2) Municipal adjustment of the present and prospective fair
47 share based upon available vacant and developable land,

1 infrastructure considerations or environmental or historic
2 preservation factors and adjustments shall be made whenever:

3 (a) The preservation of historically or important architecture and
4 sites and their environs or environmentally sensitive lands may be
5 jeopardized,

6 (b) The established pattern of development in the community
7 would be drastically altered,

8 (c) Adequate land for recreational, conservation or agricultural
9 and farmland preservation purposes would not be provided,

10 (d) Adequate open space would not be provided,

11 (e) The pattern of development is contrary to the planning
12 designations in the State Development and Redevelopment Plan
13 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
14 (C.52:18A-196 et seq.),

15 (f) Vacant and developable land is not available in the
16 municipality, and

17 (g) Adequate public facilities and infrastructure capacities are
18 not available, or would result in costs prohibitive to the public if
19 provided.

20 (3) (Deleted by amendment, P.L.1993, c.31).

21 d. Provide population and household projections for the State
22 and housing regions;

23 e. In its discretion, place a limit, based on a percentage of
24 existing housing stock in a municipality and any other criteria
25 including employment opportunities which the council deems
26 appropriate, upon the aggregate number of units which may be
27 allocated to a municipality as its fair share of the region's present
28 and prospective need for low and moderate income housing. No
29 municipality shall be required to address a fair share of housing
30 units affordable to households with a gross household income of
31 less than 80% of the median gross household income beyond 1,000
32 units within ten years from the grant of substantive certification,
33 unless it is demonstrated, following objection by an interested party
34 and an evidentiary hearing, based upon the facts and circumstances
35 of the affected municipality that it is likely that the municipality
36 through its zoning powers could create a realistic opportunity for
37 more than 1,000 low and moderate income units within that ten-
38 year period. For the purposes of this section, the facts and
39 circumstances which shall determine whether a municipality's fair
40 share shall exceed 1,000 units, as provided above, shall be a finding
41 that the municipality has issued more than 5,000 certificates of
42 occupancy for residential units in the ten-year period preceding the
43 petition for substantive certification in connection with which the
44 objection was filed.

45 For the purpose of crediting low and moderate income housing
46 units in order to arrive at a determination of present and prospective
47 fair share, as set forth in paragraph (1) of subsection c. of this
48 section, housing units comprised in a community residence for the

1 developmentally disabled, as defined in section 2 of P.L.1977,
2 c.448 (C.30:11B-2), shall be fully credited pursuant to rules
3 promulgated or to be promulgated by the council, to the extent that
4 the units are affordable to persons of low and moderate income and
5 are available to the general public.

6 The council, with respect to any municipality seeking substantive
7 certification, shall require that a minimum percentage of housing
8 units in any residential development resulting from a zoning change
9 made to a previously non-residentially-zoned property, where the
10 change in zoning precedes or follows the application for residential
11 development by no more than 24 months, be reserved for occupancy
12 by low or moderate income households, which percentage shall be
13 determined by the council based on economic feasibility with
14 consideration for the proposed density of development.

15 In carrying out the above duties, including, but not limited to,
16 present and prospective need estimations the council shall give
17 appropriate weight to pertinent research studies, government
18 reports, decisions of other branches of government, implementation
19 of the State Development and Redevelopment Plan prepared
20 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196
21 et seq.) and public comment. To assist the council, the State
22 Planning Commission established under that act shall provide the
23 council annually with economic growth, development and decline
24 projections for each housing region for the next ten years. The
25 council shall develop procedures for periodically adjusting regional
26 need based upon the low and moderate income housing that is
27 provided in the region through any federal, State, municipal or
28 private housing program.

29 No housing unit subject to the provisions of section 5 of
30 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the
31 barrier free subcode adopted by the Commissioner of Community
32 Affairs pursuant to the "State Uniform Construction Code Act,"
33 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for
34 inclusion in the municipal fair share plan certified by the council
35 unless the unit complies with the requirements set forth thereunder.
36 (cf: P.L.2008, c.46, s.6)

37
38 4. This act shall take effect immediately.
39
40

41 STATEMENT

42
43 This bill would revise the "Fair Housing Act," P.L.1985, c.222
44 (C.52:27D-301 et al.), to prohibit any categorical affordable
45 housing obligation exemption for municipalities that are eligible for
46 the Municipal (Urban) Aid Program. Prior rules of the Council on
47 Affordable Housing excluded these municipalities from providing
48 any contribution toward a region's affordable housing need. Those

1 exemptions, however, can lead to undue development burdens on
2 the other municipalities in the region. Additionally, directing more
3 affordable housing development to urban municipalities would help
4 minimize urban sprawl and would direct development to areas that
5 already have extensive infrastructure in place, allowing for more
6 cost-effective accommodation of new development.